

BAKER COUNTY-CITY PLANNING DEPARTMENT



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NOTICE OF PROPOSED UPDATES TO CHAPTER 760 OF THE BAKER COUNTY ZONING ORDINANCE

This letter is to notify you that a text amendment to Chapter 760 of the Baker County Zoning Ordinance regulating solar power generation facilities has been proposed that may affect the permissible uses of your property and other properties, and may change the value of your property.

You are receiving this notice as an owner of property either zoned Commercial Industrial (CI) or within 1,320 feet of property zoned CI, or as owner of an existing airport or airstrip identified in the Baker County Comprehensive Plan. This letter is to inform you of the proposed changes and to provide you an opportunity to ask questions and provide input to Baker County decision-makers.

What changes are proposed?

Chapter 760 of the Baker County Zoning Ordinance regulates solar power generation facilities. Two changes are proposed to Chapter 760 that would impact Utility-Scale Solar Generation Facilities, which are defined as solar power generation facilities which produce power to be sold and used for public consumption. The changes proposed are:

- Adding language to Section 760.03.E.4.b so that it reads (changes included in bold):

*No portion of a Utility-Scale Solar Power Generation Facility shall be located within 1,320 feet of an existing dwelling unless an Affidavit of Consent has been signed by all property owners with an existing dwelling within 1,320 feet of the facility. This Affidavit of Consent shall be recorded by deed in the Baker County Clerk's Office. **Utility-Scale Solar Power Generation Facilities seeking to locate on properties designated as Commercial Industrial (CI) on the Comprehensive Land Use Zoning Maps are exempt from the requirements of this section.***

- Adding language in Section 760.03.E.4.d so that it reads (changes included in bold):

The proposed language states: *No portion of a Utility-Scale Solar Power Generation Facility shall be located within 1 mile of an existing airport or airstrip **currently registered with the Federal Aviation Administration or, if located within 1 mile, must demonstrate that the proposed Utility-Scale Solar Power Generation Facility either (i) does not exceed the Federal Aviation Administration's Notice Criteria or (ii) has received a Determination of No Hazard to Aviation.***

How will these changes impact my property?

If the proposed changes are approved, a developer of a utility-scale solar power generation facility in the Commercial Industrial (CI) Zone would no longer be required to obtain an Affidavit of Consent from any homeowner within 1,320 feet of the proposed facility.

Also, if there is an existing airport or airstrip on any property that is not currently registered with the Federal Aviation Administration (FAA), then a utility-scale solar power generation facility could be located within one mile of the airport or airstrip. If the airport or airstrip is currently registered with the Federal Aviation Administration, a utility-scale solar power generation facility may be allowed if the facility does not exceed the FAA's notice criteria or has received a Determination of No Hazard to Aviation.

***** No property will be rezoned from one zone to another through this proposal. *****

What do I need to do?

Review the proposed text amendment of Chapter 760 to understand any impacts to your property. Section 760.03 is the portion of Chapter 760 proposed to be amended, which is attached to this letter. The proposed Baker County Zoning Ordinance revisions are also available for review at the Planning Department in the basement of the Baker County Courthouse located at 1995 3rd St., Baker City; for copy at a reasonable cost; or on the County's website at <https://www.bakercounty.org/planning/planning.html>. Contact Tara Micka with the Planning Department at 541-523-8219 with questions. If you would like to submit testimony to Baker County regarding the proposed changes, read the information below on how to do so.

Public Hearings

The Baker County Planning Commission will hold a hearing on this matter on Wednesday, January 3, 2024, at 5:00 PM. The Baker County Planning Commission will make a recommendation to the Baker County Board of Commissioners who will hold their own public hearings. The dates and times of future hearings, along with other application information, will continue being added to the website during the land use process, so please continue checking it for the most up-to-date information. All of these public hearings will be held in the Commission Chambers of the Baker County Courthouse, 1995 Third Street, Baker City, Oregon, and in accordance with the provisions of Chapter 115 of the Baker County Zoning Ordinance.

You are welcome to attend the public hearings, and to provide comments and testimony at the hearings, or provide written comments prior to the hearings by mailing them to Baker County Planning Department, 1995 Third Street, Suite 131, Baker City, OR 97814, or e-mailing them to tmicka@bakercountyor.gov.

Written comments must be received prior to 4:00 PM on the date of the Planning Commission hearing to be considered at that hearing or prior to 8:30 AM on the dates of the Board of Commissioner hearings. If you submit written comments, you are responsible for confirming the Planning Department staff received the testimony prior to the hearings. Testimony should avoid repetition of issues, be based on the application, and address the relevant approval criteria listed in Chapters 260 and 520. Only

comments on the relevant approval criteria are considered applicable evidence. Testimony which fails to provide a specific nexus between the documents submitted and the criteria the decision-making body must consider may not be considered in the decision-making process. Telephone conversations cannot be accepted as testimony. Testimony may be given in person by attending the public hearings.

Land Use Information

The Baker County Zoning Ordinance (BCZO) requires a text amendment to be processed as a Type IV procedure, where the Planning Commission conducts a public hearing and makes a recommendation to the Board of Commissioners, who will also conduct public hearings and make the final decision. In determining whether to grant the request, the Board of Commissioners will use the applicable criteria listed in BCZO Chapter 260 and 520, along with the Baker County Comprehensive Plan. Generally, unless otherwise noted, if a request is found to be consistent with the Zoning Ordinance it is considered to be consistent with the Comprehensive Plan.

A copy of the application, all documents and evidence submitted by or on behalf of the applicant, and the applicable criteria are available for inspection at no cost and will be provided at reasonable cost. A digital copy of the documents can be emailed to you at no cost, or a hard copy can be mailed to you by post mail, upon request, for a reasonable cost. Persons wishing to comment on the proposed application may do so by submitting written testimony to the Baker County Planning Department or providing oral testimony at the hearing.

Per ORS 197.763(3)(e), you are required by law to be notified of this land use request, and you are eligible to offer relevant testimony in support of or against the proposal during the hearing. Failure to raise an issue in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue, precludes appeal to the Land Use Board of Appeals (LUBA) on that issue.

After a determination is made by the Board of Commissioners, there will be a 21-day appeal period to the Land Use Board of Appeals (LUBA). If no appeals are filed the Plan Amendment decision is considered final.

If you have questions regarding this application, please contact Tara Micka at the Baker City-County Planning Department at (541) 523-8219 or tmicka@bakercountyor.gov. The Planning Department is located in the basement of the Baker County Courthouse, 1995 Third Street, Suite 131, Baker City, Oregon.

Notice to mortgagee, lien holder, vendor, or seller: *The Baker County Zoning Ordinance requires that if you receive this notice it shall be promptly forwarded to the purchaser.*

Chapter 760
SOLAR POWER GENERATION FACILITY

760.03 Uses. There are four categories of *solar power generation facilities* and accessory uses permitted, as described below:

- A. **Accessory Uses.** The installation and use of a solar power generation facility is an outright permitted use in any zone when located:
 - 1. On a residential structure in a zone in which residential structures are an allowed use unless subsection (c) of this Section applies; or
 - 2. On a commercial structure in any zone in which commercial structures are an allowed use unless subsection (c) of this Section applies.
 - 3. If the residential or commercial structure is designated as any of the following, the provisions of 760.02(A) do not apply:
 - a. A federally or locally designated historic building or landmark, or is located in a federally or locally designated historic district.
 - b. A conservation landmark designated by the County because of the historic, cultural, archaeological, architectural or similar merit of the landmark.
 - c. Located in an area designated as a significant scenic resource *unless* the material used must be designated as anti-reflective or eleven percent or less reflective.
- B. ***Small-Scale Solar Power Generation Facilities.*** A solar power generation facility which produces power to be used for non-commercial purposes and is not located within the Exclusive Farm Use or Timber Grazing zone. *Small-scale solar power generation facilities* may generate up to 150% of the expected annual energy need for the primary use.
- C. ***Commercial Solar Power Generation Facilities.*** A solar power generation facility which produces power to be used to power commercial developments, uses, structures or businesses located on the same parcel or tract as the *solar power generation facility* and is not located within the Exclusive Farm Use or Timber Grazing zone. Net-metering is permitted with *commercial solar power generation facilities* if it does not exceed 150% of the average expected annual energy production.
- D. ***Utility-Scale Solar Power Generation Facilities.*** A solar power generation facility which produces power to be sold and used for public consumption.
- E. **Types of Procedures**
 - 1. Permits for accessory uses described in 760.02(A) will follow the Type I procedure provisions of Section 115.05 as long as the installation of a solar power generation facility can be accomplished without increasing the footprint of the residential or commercial

structure or the peak height of the portion of the roof on which the system is installed, and the solar power generation facility would be mounted so that the plane of the system is parallel to the slope of the roof.

- a. No Planning Department fees are to be charged for processing the permit, regardless of whether a Type I procedure can be used. Building Department fees may still apply.
 - b. Extensive surveys, including but not limited to, vegetation surveys, contour maps and elevation drawings, may not be required.
2. A *Small-Scale or Commercial Solar Power Generation Facility* measuring less than 3 acres, accessory to and providing power to a primary use on property within the same ownership, and with net-metering not exceeding 150% of the average expected annual energy production, may be permitted when authorized in accordance with the Type I procedure provisions of Section 115.05. A *Small-Scale or Commercial Solar Power Generation Facility* may be located in any zone subject to the following siting requirements and standards:
- a. On or accessory to a residential structure which has been permitted or has been identified as a pre-existing, non-conforming structure; or
 - b. On or accessory to a commercial structure which has been permitted or has been identified as a pre-existing, non-conforming structure; and
 - c. Sited in rear- or side-yards and measuring no more than 15 feet in height; and
 - d. Sited in a location which meets all applicable setback requirements set forth in *Chapter 340 – Development Standards (Setback Requirements) for All Zones*.
 - e. Where feasible, electrical cables and transmission lines shall be placed underground.
3. A *Small-Scale or Commercial Solar Power Generation Facility* measuring more than 3 acres, and with net-metering not exceeding 150% of the average expected annual energy production, may be permitted when authorized in accordance with the Type III procedure provisions of Section 115.07.
4. A *Utility-Scale Solar Power Generation Facility* may be permitted when authorized through a Conditional Use Permit, and in accordance with the Type III procedure provisions of Section 115.07. A *Utility-Scale Solar Power Generation Facility* may be located in any zone subject to the following siting requirements and standards:
- a. No portion of a *Utility-Scale Solar Power Generation Facility* shall be within 1,320 feet of:
 - i. Properties designated on the Comprehensive Land Use Zoning Maps as residential (those zoned Rural Residential (RR-5) or Recreation Residential (RR-2) only), or
 - ii. The city limits of an incorporated city, unless a resolution specifically supporting placement of a *solar power generation facility* within 1,320 feet of the city limits has been passed by the city council of that city.

- b. No portion of a *Utility-Scale Solar Power Generation Facility* shall be located within 1,320 feet of an existing dwelling unless an Affidavit of Consent has been signed by all property owners with an existing dwelling within 1,320 feet of the facility. This Affidavit of Consent shall be recorded by deed in the Baker County Clerk's Office.
 - c. All *Utility-Scale Solar Power Generation Facilities* shall meet setback requirements set forth in *Chapter 340 – Development Standards (Setback Requirements) for All Zones*.
 - d. No portion of a *Utility-Scale Solar Power Generation Facility* shall be located within 1 mile of an existing airport or airstrip.
 - e. Where feasible, electrical cables and transmission lines shall be placed underground.
- F. Permit Expiration Dates and Extensions. *Solar Power Generation Facilities* shall be subject to permit expiration periods and extension requirements set forth in Chapter 220 of this Ordinance.